



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3160 and 9230

[212.LLHQ310000.L13100000.PP0000]

RIN 1004-AE77

Onshore Oil and Gas Operations and Coal Trespass—Annual Civil Penalties

Inflation Adjustments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management’s (BLM) regulations governing onshore oil and gas operations and coal trespass as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and consistent with applicable Office of Management and Budget (OMB) guidance. The oil and gas operations penalty adjustments made by this final rule constitute the 2021 annual inflation adjustments, accounting for 1 year of inflation spanning the period from October 2019 through October 2020. The coal trespass inflation adjustments in this rule include the initial “catch-up” adjustment for 2016, and the annual adjustments for years 2017 to 2021.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For information regarding the BLM’s Fluid Minerals Program, please contact Donna Dixon, Division Chief, Fluid Minerals Division, telephone: 505-954-2032; email: dbdixon@blm.gov. For information regarding the BLM’s Solid Minerals Program, please contact Lindsey Curnutt, Division Chief, Solid Minerals Division, telephone: 775-824-2910; email: lcurnutt@blm.gov.

For questions relating to regulatory process issues, please contact Jennifer Noe, Division of Regulatory Affairs, email: jnoe@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7 days a week to contact the above individuals.

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I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (the 2015 Act) became law, amending the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410).

The 2015 Act requires agencies to:

1. Adjust the level of civil monetary penalties for inflation with an initial “catch-up” adjustment through an interim final rulemaking in 2016;
2. Make subsequent annual adjustments for inflation beginning in 2017; and
3. Report annually in Agency Financial Reports on these inflation adjustments.

The purpose of these adjustments is to maintain the deterrent effect of civil monetary penalties and promote compliance with the law (*see* Sec. 1, Pub. L. 101-410).

As required by the 2015 Act, the BLM issued an interim final rule that adjusted the level of civil monetary penalties in BLM regulations with the initial “catch-up” adjustment (RIN 1004-AE46, 81 FR 41860), which was published on June 28, 2016, and became effective on July 28, 2016. On January 19, 2017, the BLM published a final rule (RIN 1004-AE49, 82 FR 6305) updating the civil penalty amounts to the 2017 annual adjustment levels. Final rules updating the civil penalty amounts to 2018, 2019, and 2020 annual adjustment levels were published in subsequent years (RIN 1004-AE51, 83 FR 3992; RIN 1004-AE56, 84 FR 22379; and RIN 1004-AE77, 85 FR 10617, respectively).

OMB issued Memorandum M-21-10 on December 23, 2020, (Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015) explaining agency responsibilities for identifying applicable penalties and calculating the annual adjustment for 2021 in accordance with the 2015 Act.

II. Calculation of 2021 Adjustment

In accordance with the 2015 Act and OMB Memorandum M-21-10, the BLM has identified applicable civil monetary penalties in its regulations and calculated the annual adjustments. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation and is assessed or enforceable

through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, nor does it include fees for services, licenses, permits, or other regulatory review. The calculated annual inflation adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the October preceding the date of the adjustment, and the prior year's October CPI-U. Consistent with guidance in OMB Memorandum M-21-10, the BLM divided the October 2020 CPI-U by the October 2019 CPI-U to calculate the multiplier. In this case, October 2020 CPI-U (260.388) / October 2019 CPI-U (257.346) = 1.01182. OMB Memorandum M-21-10 confirms that this is the proper multiplier. (OMB Memorandum M-21-10 at 1 and n.4.)

The 2015 Act requires the BLM to adjust the civil penalty amounts in 43 CFR 3163.2 and 43 CFR 9239.5-3(f)(1). To accomplish this, the BLM multiplied the current penalty amounts in 43 CFR 3163.2(b)(1) and (2), (d), (e), and (f) by the multiplier set forth in OMB Memorandum M-21-10 (1.01182) to obtain the adjusted penalty amounts. The 2015 Act requires that the resulting amounts be rounded to the nearest \$1.00 at the end of the calculation process.

This year's adjustments include 43 CFR 9239.5-3(f)(1), which provides for a penalty of not more than \$1,000 for each day of violation for willfully conducting coal exploration for commercial purposes without an exploration license. This provision meets the criteria for annual adjustments under the 2015 Act but was inadvertently omitted in previous adjustments. Consistent with OMB Memorandum M-16-06 (February 24, 2016), the adjusted penalty amount was calculated by applying the initial "catch-up" adjustment based on the percent change between the CPI-U for 1977, the year the current penalty amount was established by regulation, and the October 2015 CPI-U, giving a catch-up adjustment multiplier of 3.86101 for 2016. After applying the initial catch-up adjustment multiplier, that amount was multiplied by 1.09481 to reflect the

combined annual inflation adjustments for 2017 to 2021, giving an adjusted penalty of \$4,227.00.

The adjusted penalty amounts will take effect immediately upon publication of this rule. Pursuant to the 2015 Act, the adjusted civil penalty amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates such increase. This final rule adjusts the following civil penalties:

CFR Citation	Description of the Penalty	Current Penalty	Adjusted Penalty
43 CFR 3163.2(b)(1)	Failure to comply	\$1,115	\$1,128
43 CFR 3163.2(b)(2)	If corrective action is not taken	\$11,160	\$11,292
43 CFR 3163.2(d)	If transporter fails to permit inspection for documentation	\$1,115	\$1,128
43 CFR 3163.2(e)	Failure to permit inspection, failure to notify	\$22,320	\$22,584
43 CFR 3163.2(f)	False or inaccurate documents; unlawful transfer or purchase	\$55,800	\$56,460
43 CFR 9239.5-3(f)(1)	Coal exploration for commercial purposes without an exploration license	\$1,000	\$4,227

III. Procedural Requirements

A. Administrative Procedure Act

In accordance with the 2015 Act, agencies must adjust civil monetary penalties “notwithstanding Section 553 of the Administrative Procedure Act” (sec. 4(b)(2), 2015 Act). The BLM is promulgating this 2021 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the 2015 Act and OMB guidance. A proposed rule is not required because the 2015 Act expressly exempts the annual inflation adjustments from the notice and comment requirements of the Administrative Procedure Act. In addition, since the 2015 Act does not give the BLM any discretion to vary the amount of the annual inflation adjustment for any given penalty to reflect any views or

suggestions provided by commenters, it would serve no purpose to provide an opportunity for public comment on this rule.

B. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. OIRA has determined that this rule is not significant. (*See* OMB Memorandum M-21-10 at 3).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability and to reduce uncertainty and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science, and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements to the extent permitted by the 2015 Act.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The 2015 Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment (*see* sec. 4(b)(2), 2015 Act). Because the final rule in this case does not include publication of a proposed rule, the RFA does not apply to this final rule.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule will potentially affect individuals and companies who conduct operations on oil and gas leases or who explore for coal for commercial purposes without an exploration license on Federal or Indian lands. The BLM believes that the vast majority of potentially affected entities will be small businesses as defined by the Small Business Administration. However, the BLM does not believe the rule will pose a significant economic impact on the oil and gas or coal industries, including any small entities, as any lessee or trespasser can avoid being assessed civil penalties by operating in compliance with BLM rules and regulations.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

J. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. National Environmental Policy Act

A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because, as a regulation of an administrative nature, the rule is

covered by a categorical exclusion (*see* 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 9230

Penalties, Public lands.

For the reasons given in the preamble, the BLM amends chapter II of title 43 of the Code of Federal Regulations as follows:

PART 3160 – ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 107, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

Subpart 3163 – Noncompliance, Assessments, and Penalties

§ 3163.2 [Amended]

2. In § 3163.2:

- a. In paragraph (b)(1), remove “\$1,115” and add in its place “\$1,128”.
- b. In paragraph (b)(2), remove “\$11,160” and add in its place “\$11,292”.
- c. In paragraph (d), remove “\$1,115” and add in its place “\$1,128”.

d. In paragraph (e) introductory text, remove “\$22,320” and add in its place “\$22,584”.

e. In paragraph (f) introductory text, remove “\$55,800” and add in its place “\$56,460”.

PART 9230 – TRESPASS

3. The authority citation for part 9230 is revised to read as follows:

Authority: R.S. 2478 and 43 U.S.C. 1201.

Subpart 9239 – Kinds of Trespass

§9239.5-3 [Amended]

4. In §9239.5-3(f)(1), remove “\$1,000” and add in its place “\$4,227”.

Laura Daniel-Davis,
Principal Deputy Assistant Secretary,
Land and Minerals Management.
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